

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

IN RE:

FEBRUARY 22, 200

**APPLICATION OF BROADSPAN
COMMUNICATIONS, INC. D/B/A
PRIMARY NETWORK COMMUNICATIONS,
INC. FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY AS A
COMPETING TELECOMMUNICATIONS
SERVICES PROVIDER**

)
)
)
)
)
)
)

DOCKET NO. 99-00789

**ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

On January 26, 2000, this matter came before the Tennessee Regulatory Authority ("Authority"), upon the Application of BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc. ("BroadSpan") for a Certificate of Public Convenience and Necessity as a Competing Telecommunications Service Provider to offer a full array of telecommunications services within the State of Tennessee (the "Application"). The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

LEGAL STANDARD FOR GRANTING CCN

BroadSpan's Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the

POSTED
2-22-00

construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to hearing.

BROADSPAN'S HEARING

BroadSpan's Application was uncontested. At the hearing held on January 26, 2000, BroadSpan was represented by Mr. Henry Walker and Ms. April Ingram of Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219. In addition, Ms. Cully Dale, BroadSpan's Senior Legal Counsel, presented testimony and was subject to examination by the Authority's Directors. Upon BroadSpan's conclusion of the proof in its case, the Authority granted BroadSpan's Application based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. BroadSpan is a corporation organized under the laws of the State of Missouri and received its Certificate of Authority to transact business in the State of Tennessee on September 22, 1999.

2. The complete street address of BroadSpan's principal place of business is 11756 Borman Drive, Suite 101, St. Louis, Missouri 63146. The phone number is (314) 214-0000 and fax number is (314) 569-7110. BroadSpan's outside counsel are Henry Walker, Esq. and April A. Ingram, Esq., 414 Union Street, Post Office Box 198062, Nashville, TN 37219.

3. The Application and supporting documentary information existing in the record indicate that BroadSpan has the requisite technical and managerial qualifications necessary to provide telecommunications services within the State of Tennessee on a facilities-based and resale basis. Specifically, BroadSpan's management and technical teams have extensive expertise in the telecommunications industry. BroadSpan is currently authorized to provide telecommunications services in Missouri and Illinois.

4. BroadSpan has the necessary capital and financial capability to provide the services it proposes to offer.

5. BroadSpan has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

1. BroadSpan intends to offer a full array of telecommunications services throughout the State of Tennessee on a facilities-based and resale basis. Specifically, BroadSpan intends to offer a broad range of interexchange services, exchange access and special access services, and local exchange services. BroadSpan will offer these services through resale and the use of its own facilities. BroadSpan's target market for its facilities-based services will be business and residential customers.

2. Except as may be authorized by law, BroadSpan does not intend to serve any areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines where local exchange competition is prohibited pursuant to Tenn. Code Ann. § 65-4-201(d).

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Application and the record in this matter, the Authority finds that approval of BroadSpan's application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

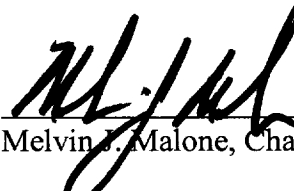
IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

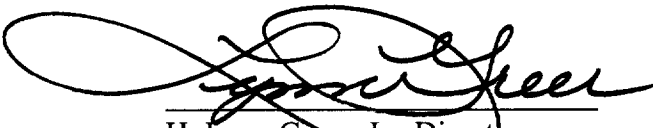
1. Pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules, BroadSpan has filed a satisfactory small and minority-owned telecommunications business participation plan.

2. BroadSpan has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. BroadSpan's Application as applied for is approved;
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary